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October 17, 2016

Betsy Shaw
Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
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1200 Pennsylvania Avenue, N. W.
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Subject: Request for Early Input to the FY 2018-2019 OAR NPM Guidance

Dear Deputy Assistant Administrator Shaw:

The National Tribal Air Association (NTAA) is pleased to submit these comments regarding the U.S. Environmental Protection Agency's (EPA)'s Request for Early Input to the FY 2018 -2019 Office of Air and Radiation (OAR) National Program Manager (NPM) Guidance (2018-2019 Guidance).

The NTAA is a member-based organization with 11 2 principal member Tribes. The organization's mission is to advance air quality management policies and programs that are aligned with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. In addition, it is also important that EPA understands interactions with the organization do not substitute for government -to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

NTAA approves generally of the OAR NPM Guidance for 2016-2017 (2016-2017 Guidance), particularly with EPA's expanded and substantive discussion about Indian Tribes and how their air quality issues will be addressed. However, the NTAA finds it necessary to provide comments and recommendations to the 2018-2019 Guidance to improve and clarify sections of the 2016 -2017 Guidance in respect to Indian Tribes. Further, the NTAA values and recognizes the inclusion of Alaskan Native Villages and the Federal Indian Country Minor New Source Review Rule (Tribal Minor NSR Rule) in the 2018-2019 Guidance.

Comments and Recommendations for 2018-2019 Guidance to Improve upon 2016-2017 Guidance

1. Training support for Indian Tribes to assess and comment on Title V permits

The 2016-2017 Guidance commits EPA resources to address a number of issues related to the Title V operating permits program including timely permit issuance and compliance monitoring. A number of Title V sources upwind to Tribal lands are being issued or reissued Title V permits. It would benefit Indian Tribes to review these permits for compliance and other issues, and provide comments as appropriate or necessary in order to protect the health and environment of their communities from the sources requiring Title V permits. Unfortunately, there are Tribes that lack the capacity and expertise to conduct these reviews and/or to make comments regarding Title V permits which is compounded by the number of permits requiring such reviews and/or comments.

The NTAA recommends that, in the 2018-2019 Guidance, EPA commit to providing Indian Tribes with ongoing training support, and additional technical and financial support, to assess and comment on Title V permits.

2. Engaging Indian Tribes in development and implementation of SIPs

In the FY 2016-2017 Guidance, the NTAA recommended that the Guidance identify plans on how EPA intended to engage Indian Tribes in consultation with states regarding the development and implementation of SIPs. In response to this recommendation, EPA focused instead on the regional approaches to these issues through the Tribe's EPA-Tribal Environmental Plans; and that OAR committed to consultation with Tribes regarding such issues.

The NTAA does not find EPA's response to be respectful to the needs of Indian Tribes. EPA is requiring individual states to submit several SIPs to EPA on a number of air-related issues. This is not only burdensome to the states, but is a barrier to the many Tribes that could be significantly impacted by such SIPs. Therefore, Tribes need to be engaged in the development and implementation of SIPs. The reason is that states are not obligated to consult with Tribes under the law unless a Tribe has treatment-as-a-state for such Clean Air Act provisions as Section 126. However, EPA has a trust responsibility to Tribes that necessitates it to protect the treaty rights, lands, assets, and resources of Tribes which could be impacted by the SIPs that EPA requires states to submit. As such, Tribes require more specificity from EPA how it will honor this trust responsibility to Tribes.

The NTAA recommends that, in the 2018-2019 Guidance, EPA commits to the development of national and regional guidance specifically including a framework on how EPA will engage Indian Tribes in the development and implementation of SIPs and strategies of encouraging states to participate in this engagement with Tribes.

3. Facilitation of Partnerships

Indian Tribes are often required to act alone without strong communication with other entities including co-regulators. Partnerships between Tribes and other air quality regulators will provide benefits for these entities through gaining Tribal perspectives on air quality issues faced by many Tribes. Partnerships through entities like Regional Planning Organizations provide

Tribes with a seat at the table with other air quality co-regulators to tackle complex issues together.

The NTAA recommends that the 2018-2019 Guidance encourage and fund partnerships between Indian Tribes, and other entities and co-regulators, specifically in areas of co-regulations, monitoring analysis, and indoor air quality testing and remediation.

Structural Changes to 2018-2019 Guidance

1. Add Section on Alaska Native Villages

For the 2016-2017 Guidance, the NTAA recommended that specific reference be made to Alaska Native Villages as Indian Tribes covered by the Guidance, and that the Guidance distinguish air issues unique to Alaska Native Villages for which EPA intends to undertake air quality activities. The NTAA purpose for this recommendation is within the 2016-2017 Guidance referenced Alaska Native Villages only once while referencing “Indian Country” several times which, by its definition, does not include Alaska Native Villages.

EPA agreed with NTAA’s recommendation and attempted to modify the 2016-2017 Guidance to better reflect Alaska Native Villages where appropriate. The NTAA would like to see EPA to carry this forth in future NPM Guidance reports. It must be observed that Alaska Native Villages share many of the same air quality issues as Indian Country, but warrant particular attention by EPA since approximately 40% of the Nation’s federally-recognized Indian Tribes (*e.g.*, 229 Alaska Native Villages) are located in Alaska and 228 of these Villages are not eligible to receive a large allocation of federal monies and resources designated for Indian Tribes with reservation lands. In addition other air quality issues, such as cruise ship emissions and lead pollutants from small air planes at rural airports, are unique to Alaska Native Villages, and are, in fact, discussed in several versions of the Status of Tribal Air Reports published by the NTAA.

The NTAA recommends that the 2018-2019 Guidance continue to include a “Tribal Programs” section with the addition of a subsection on Alaska Native Villages.

2. Add Section on Tribal Minor NSR Rule

The 2016-2017 Guidance makes one reference to the Tribal Minor NSR Rule. The NTAA finds that one reference is insufficient. Since April 2015, 111 sources have been designated for inclusion under the Tribal Minor NSR Rule, and a Federal Implementation Plan has been adopted by EPA for Oil and Natural Gas True Minor Sources and Amendments to the Tribal Minor NSR Rule. Most of EPA and Tribal resources will be required in the coming years to successfully implement the Tribal Minor NSR rule throughout Indian Country.

The NTAA recommends that the 2018-2019 Guidance include a “Tribal Programs” section and that a subsection on the Tribal Minor NSR Rule be included.

3. Add Section for NPM Guidance Measures for Tribal Air Programs

NTAA has prepared a table listing some proposed measures for tribal programs in the NPM guidance. In NTAA conversations with EPA staff, NTAA has heard a number of things:

the measures/indicators designation in the guidance is a distinction without a difference (indicators do not have targets and are used to assess the health of the program); measures for Tribal air programs have been developed for a number of requirements (NPM guidance, GAP guidance, etc.) but there is little consistency among them; Tribes should develop measures for which data can be reliably gathered; and, a goal should be to promote consistency across the agency for tribal air measures.

With that in mind, NTAA offers these measures and provide a rationale for each:

- **Number of Tribes with operating air programs:** NTAA has identified this as an indicator and, therefore, it has no target. Regions routinely report these numbers so it should not be difficult to develop time series data to show trends.
- **Percentage of tribal air monitoring systems operating successfully:** NTAA proposes this measure (not an indicator) as a way to track the reliability of the air monitoring systems in Indian country and provide early warnings for infrastructure issues. NTAA recognizes that the goal would be to have them operating all of the time.
- **Number of new non-regulatory TAS applications submitted by Tribes and deemed complete by EPA:** This and the following item are clear measures of program growth. They are fully in the control of the tribes (the approval process is largely out of the control of the Tribes and is run principally by EPA) and show how the Tribal programs mature over time.
- **Number of new regulatory TAS applications submitted by Tribes and deemed complete by EPA:** See above.
- **Number of source operating permits (all types) issued by Tribes:** Once again, like the above two measures, this measure shows Tribal programs are maturing.
- **Number of new updated Emission Inventories completed:** Completing and updating Emission inventories are important tasks for a Tribe to understand the nature and extent of the threats to the Tribe's air quality. Maintaining and updating EIs help define how the Tribe's air program will develop. NTAA understands that the Regions routinely collect this kind of information.

NTAA has not proposed a measure for the indoor environments section of the guidance since it seems to address primarily training and capacity building and most of the mitigation/remediation effort does not fall under EPA's mission.

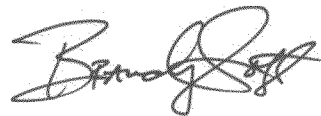
Proposed Tribal Air Program Measures and Indicators

Code	Measure Text	Indicator	Target
01	Number of Tribes with operating air programs	Yes	-
02	Percentage of tribal air monitoring systems operating successfully	No	100%
03	Number of new non-regulatory TAS applications submitted and deemed complete by EPA	No	3
04	Number of new regulatory TAS applications submitted by Tribes and deemed complete by EPA	No	1
05	Number of source operating permits (all types) issued by Tribes	No	??
06	Number of new or updated Emission Inventories completed	No	??

Conclusion

In summary, the NTAA is pleased to provide the aforementioned comments and recommendations concerning the 2018-2019 Guidance.

On Behalf of the NTAA Executive Committee,



Brandy Toft, Vice-Chair,
National Tribal Air Association